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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/817,613	04/02/2004	Andreas Kimmerle	LORWER P28AUS	2469
20210	7590	10/13/2005	EXAMINER	
DAVIS & BUJOLD, P.L.L.C. FOURTH FLOOR 500 N. COMMERCIAL STREET MANCHESTER, NH 03101-1151			NGUYEN, JIMMY T	
			ART UNIT	PAPER NUMBER
			3725	

DATE MAILED: 10/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/817,613	Applicant(s) KIMMERLE, ANDREAS	
	Examiner Jimmy T Nguyen	Art Unit 3725	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 August 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20-38 is/are pending in the application.
- 4a) Of the above claim(s) 35-38 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 20-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 April 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 4/2/04 & 8/4/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

This application contains claims directed to the following patentably distinct species of the claimed invention:

Group I. The species in figures 1 and 2.

Group II The species in figure 3.

Group III. The species in figure 4.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 20 is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to

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be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

During a telephone conversation with Attorney Michael Bujold on June 01, 2005 a provisional election was made without traverse to prosecute the invention of Group I, claims 20-34. Affirmation of this election must be made by applicant in replying to this Office action. Claims 35-38 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention. An action on the merits follows.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "packaging band" (claim 20, line 2); "the pallets and articles" (claim 20, line 3) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the

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renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

Claim 20 is objected to because of the following informalities:

In claim 20, line 4, the words "packing band" should be changed to --- packaging band --.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 22-28 and 30-34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 22, line 2, there is no antecedent basis for "the linear guide" in the claim as it is depended upon claim 20. For the purpose of examination, the claim is treated as it is depended upon claim 21.

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Regarding claim 26, line 2, a broad limitation followed by a linking terms “preferably” is considered indefinite since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired.

Regarding claim 27, line 2, there is no antecedent basis for “the linear guide” in the claim as it is depended upon claim 20. For the purpose of examination, the claim is treated as it is depended upon claim 21.

Regarding claim 30, line 2, there is no antecedent basis for “the bracket” in the claim as it is depended upon claim 28.

Regarding claim 31, line 2, there is no antecedent basis for “the guide element” in the claim as it is depended upon claim 26.

Regarding claim 33, line 2, a broad limitation followed by a linking terms “preferably” is considered indefinite since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired.

Regarding claim 34, lines 1-2, there is no antecedent basis for “the damping elements (emphasis added)” in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 20, 21, 27, and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Fulton et al. (hereinafter "Fulton") (US 4,254,703).

Regarding claim 20, Fulton discloses an apparatus for strapping and bundling pallets (P) and articles (A), having a strapping device (fig. 1) from which a strapping band (S) can be passed around the pallets and articles and the apparatus having a closure device (57) for tensioning and closure of the packaging band (col. 8, lines 36-41); wherein the strapping device is provided with a guide device (59) on which the closure device is arranged (col. 8, lines 48-52), the guide device support "at least some" of the weight of the closure device (fig. 1).

Regarding claim 21, the guide device has a linear guide (189), at one of whose ends the closure device is arranged (fig. 1, (col. 10, lines 53-54)).

Regarding claim 27, as best understood, Fulton discloses the guide device has a guide element (187) for bearing and supporting the linear guide.

Regarding claim 29, the guide device (59) is connected to the strapping device (via a carriage (61)) by a bracket (fig. 3).

Claims 20, 21, and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Sterner (US 3,150,585).

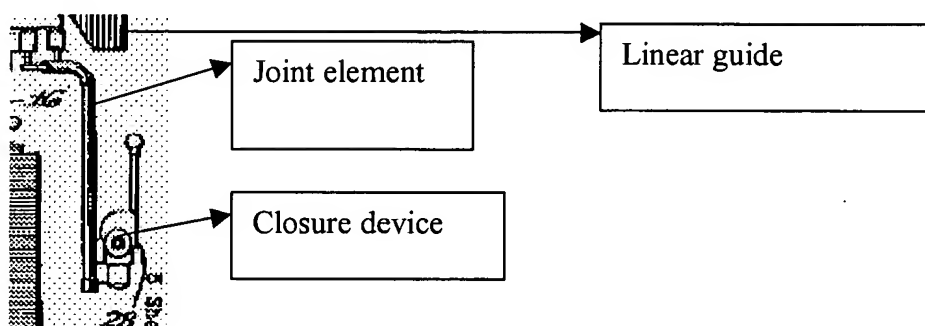
Regarding claim 20, Sterner discloses an apparatus for strapping and bundling pallets and articles (1), having a strapping device (fig. 1) from which a strapping band (S) can be passed around the pallets and articles and the apparatus having a closure device (28) for tensioning and closure of the packaging band (col. 3, lines 13-17); wherein the strapping device is provided with

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a guide device (7, 8, 9) on which the closure device is arranged (fig. 1), the guide device support “at least some” of the weight of the closure device (fig. 1).

Regarding claim 21, the guide device has a linear guide (7, 9), at one of whose ends (see the right end of element (7) in fig. 1) the closure device (28) is arranged (fig. 1).

Regarding claim 22, the closure device is arranged such that the closure device (28) can move (see col. 3, lines 13-16) on the linear guide by a joint element (see the illustration below).



Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 26 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sterner in view of Pearson et al. (hereinafter “Pearson”) (US 6,745,677).

Regarding claim 26, as best understood, Sterner discloses the invention substantially as claimed as set forth above. Sterner discloses the closure device is connected to the joint element (fig. 1). Sterner does not disclose that the closure device is connected to the joint element by a

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detachable plug connection. However, the patent to Pearson, in a strapping art, teaches a strapping apparatus having a closure device (18, 20) connected to a joint element (figs. 3 and 4) of the apparatus by a detachable plug connection (42, 44, 46, 48, 52, 54, 78, 80, 82, 84) (Examiner interprets this connection is a plug connection because a vertical neck of the elements (48 and 80) of the closure device, each being plugged into a respective hole of the joint element in order to connect the closure device to the joint element). Pearson teaches the detachable connection of the closure device to the joint element in order to easily remove and install the closure device in the strapping apparatus to minimize the “down time” of the strapping apparatus (col. 2, lines 42-46). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide Sterner’s closure device with a detachable connection, as taught by Pearson, in order to easily remove and install the closure device in the strapping apparatus to minimize the “down time” of the strapping apparatus.

Regarding claim 31, as best understood, the linear guide is in the form of a rail (fig. 1) and a guide element (9) of the linear guide has rollers (11).

Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sterner in view of Fischer (US 4,820,363).

Regarding claim 33, as best understood, Sterner discloses the invention substantially as claimed as set forth above. Sterner discloses that the closure device is a hand held appliance (see fig. 1 and also see col. 3, lines 24-27 in the disclosure with references to US 2,594,397). Sterner does not disclose that the closure device is the type of electrical welding appliance with a rechargeable battery. However, the patent to Fisher, in a strapping art, teaches a hand-held

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closure device (10) for tensioning and closing of a packaging band (14), the closure device is an electrical welding appliance powered by a rechargeable battery (50) (col. 7, lines 58-59) for automatically closing the packaging band and for operating independently of an electrical power supply network (col. 3, lines 16-18). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute Sterner's closure device with the type of closure device (i.e. an electrical welding appliance powered by a rechargeable battery), as taught by Fischer, in order to automatically close the packaging band and to operate independently of an electrical power supply network.

Allowable Subject Matter

Claims 23-25, 28, 30, 32 and 34 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Regarding claim 23, the claim is allowable because the art of record, considered alone or in combination, fails to teach or to suggest *a dampen element arranged between a linear guide and a joint element*.

Regarding claim 25, the claim is allowable because the art of record, considered alone or in combination, fails to teach or to suggest that *the closure device can pivot only to a maximum of 45 degrees*. The closure device of Sterner (US 3,150,585) pivoted more than 45 degree in order to get closer to the articles to bind the strap.

Regarding claim 28, the claim is allowable because the art of record, considered alone or in combination, fails to teach or to suggest *the rotation of the guide element*.

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Regarding claim 32, the claim is allowable because the art of record, considered alone or in combination, fails to teach or to suggest *the inclined arrangement of the guide element*.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US 3,003,296 to Feldkamp et al. teaches a brick packaging device having a closure device (74).

US 3,213,781 to Collins et al. teaches an apparatus having a closure device (7) for bundling pallets and articles.

US 3,867,878 to Buhne teaches a packaging device having a hand-held closure device (col. 4, lines 6-9).

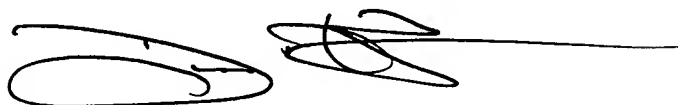
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jimmy T Nguyen whose telephone number is (571) 272-4520. The examiner can normally be reached on Mon-Thur 8:00am - 6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on (571) 272- 4419. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JTNguyen
June 01, 2005

A handwritten signature in black ink, consisting of a stylized 'D' followed by a series of loops and a long horizontal line extending to the right.

DERRIS H. BANKS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700